

Attention is drawn to orders prohibiting publication of certain information in this determination

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2025] NZERA 694
3347760
3368865
3382143

BETWEEN	IGD Applicant in 3347760 Respondent in 3368865 & 3382143
AND	SAJ Respondent in 3347760 Applicant in 3368865 & 3382143

Member of Authority:	Nicola Craig
Representatives:	Stephen Corlett, counsel for IGD Donna Pokere-Phillips, advocate for SAJ
Investigation Meeting:	On the papers
Submissions received:	29 October 2025 from IGD 29 and 30 October 2025 from SAJ
Determination:	30 October 2025

THIRD DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] SAJ is Te Tumu Whakarae, chief executive of IGD, a charitable organisation providing community services. Both are identified by randomly chosen letters.

[2] There are three Authority matters between the parties which have resulted so far in three determinations, including this one. In the first matter IGD sought orders and an interim order was granted restraining SAJ from publishing the content of certain

material from mediation, along with a non-publication order.¹ In the second matter SAJ sought to be reinstated from suspension by IGD as part of an investigative/disciplinary process, along with other orders. The orders sought were not granted.²

[3] Then SAJ lodged an application about “contractual and governance breaches” along with unjustified disadvantage harming SAJ.³ The parties agreed that all three matters should be heard together. An investigation meeting was held in September 2025 regarding the three matters with submissions subsequently received. Submissions regarding one further issue about contractual arrangements were still being received up until yesterday.

The Authority’s process

[4] On 29 October 2025 SAJ’s representative filed a memorandum which included seeking orders regarding disciplinary action. Given that SAJ had until the following day (30 October 2025) to provide any response to the letter on behalf of IGD, any reply submissions were urgently sought from IGD and provided on 29 October 2025. A reply submission was then filed on SAJ’s behalf today, which focuses on tikanga Māori. No affidavit evidence has been supplied supporting material in that submission. Given the time pressures, this determination will be issued but a supporting affidavit will be filed as soon as practicable.

[5] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has not recorded everything received from the parties but has stated findings, expressed conclusions and specified orders made as a result.

Non-publication order

[6] An interim non-publication order is in place regarding the parties’ names and any identifying details in relation to these three proceedings between the parties. The involvement of substantial numbers of people at investigation meeting days as well as the nature of the IGD organisation and its connections will need to be considered in deciding whether a permanent order should be made.

¹ *IGD v SAJ* [2024] NZERA 777 (file 3347760).

² *SAJ v IGD* [2025] NZERA 397 (file 3382143).

³ File 3382143.

[7] In the meantime the reply submissions received today refer to a tikanga Māori need to respond to an iwi request for a briefing hui next week with SAJ. It is not evident whether a similar request has been made to IGD. No specific request regarding the non-publication order is made on SAJ's behalf although it is clear an obligation to attend the hui is felt.

[8] Given the need to deal with the order sought by SAJ before any disciplinary action is taken, I make no immediate decision on non-publication, with the order remaining in place. The parties are encouraged to reach an agreed position on whether and to what extent the interim order should be amended. They should revert to the Authority, which would then be amenable to assessing the non-publication order.

The issue

[9] The issue for determination is whether an interim order should be made regarding the disciplinary action by IGD against SAJ.

Events

[10] For the sake of completeness I summarise SAJ's issues which were identified to be investigated at the recent investigation meeting – did IGD breach its contractual obligation to pay SAJ a bonus entitlement, act in an unjustifiable manner causing her disadvantage (including a pattern of undermining, harassment and cultural disregard) or unjustifiably suspend her, along with what remedies should be ordered?

[11] It was evident at the recent investigation meeting that IGD was proceeding with its investigation into SAJ and had not undertaken to stop that investigation or any disciplinary action until after a substantive determination was issued regarding the three proceedings.

[12] By way of a lengthy 23 October 2025 emailed letter IGD wrote to SAJ. It set out its summary of the allegations made regarding SAJ, SAJ's views/discussion and its "preliminary findings" on those allegations. It concludes there has been misconduct and serious misconduct and the organisation is considering terminating SAJ's employment. SAJ is given the opportunity to provide any response by close of business on 30 October 2025.

Submissions

[13] Submissions for SAJ argue that IGD's letter amounts to a further breach of natural justice and risks "undermining the integrity of the Authority's process on matters already before it".

[14] Reference is made to a request on SAJ's behalf to IGD to defer any disciplinary decision until after the Authority's determination, which was declined.

[15] Today's submissions on IGD's behalf refer to tikanga Māori forming a part of New Zealand's common law.⁴ It is argued that a call yesterday from an iwi leader and reference to mention of SAJ/IGD at a high-level forum (despite SAJ not speaking to anyone about the case) takes this case in a different direction to others where Authority intervention was not seen as warranted. Reference is made to the leader referring to the IGD organisation as a taonga of the iwi.

[16] Submissions for IGD oppose the order sought by SAJ and rely on cases declining to make interim orders preventing any decision to dismiss.⁵ The issues awaiting substantive determination are summarised as whether a performance appraisal was a fabrication, the bonus claim, allegations of breaches of confidentiality by discussing employment matters with others and unfair micromanagement. It is submitted that these issues would not be pre-empted by IGD concluding its disciplinary process, regardless of whether action is taken against SAJ.

[17] IGD is concerned that it has already delayed progression of the investigation to accommodate the current proceedings. An order as sought by SAJ would delay that process further. The organisation identifies disadvantages to it in continuing to have to pay SAJ as well as its Interim/Acting CEO, being unable to look to appointing a permanent CEO (if dismissal occurs) or reintegrating SAJ (if not) and staff facing continued uncertainty.

Conclusions

[18] No finding is made regarding whether IGD's recent letter amounts to a breach of natural justice or is otherwise an unjustifiable action by IGD.

⁴ Relying on *Takamore v Clarke* [2012] NZSC

⁵ *Ports of Auckland Ltd v Findlay* [2017] NZEmpC 45 and *Moke v Raukura Hauora o Tainui Trust* [2023] NZERA 603.

[19] There are considerations which speak against intervening in IGD's process.

[20] In the Authority's second determination it was noted to be unusual for the Authority to intervene to restrain an employer from taking further steps in an employer's investigation or disciplinary process based on the Employment Court's rationale in *Ports of Auckland Ltd v Findlay*:

... [O]rders restraining an employer from proceeding with an investigative/disciplinary process into concerns about employee conduct will be rare. That will be even more so where, as here, permanent orders are sought restraining an employer from taking any further steps at all, effectively halting the employer's processes in their tracks. The reasons for this are clear. The first point is that such an approach runs the risk of putting the cart before the horse, and pre-judging the endpoint that an employer might (but might not) get to. It also runs the risk of cutting across an employer's obligation to investigate concerns, including health and safety concerns impacting on other employees. Also relevant is the interest, both to the individuals concerned, and more generally, in allowing such processes to run their course without undue interruption and delay. A stop-start approach to an investigative and disciplinary process which invites intervention along the way from the Authority; the Employment Court on challenge; and potentially the Court of Appeal and Supreme Court by way of further appeal; is plainly undesirable for public policy reasons.⁶

[21] In the second determination it was concluded:

The compelling undesirability of interrupting an employer's process is referred to above. I am not persuaded that this is one of those very rare situations where an order halting an investigatory/disciplinary process should be made.⁷

[22] As the substantive issues awaiting determination are very largely independent of the issues in the disciplinary process, SAJ's substantive issues would not be pre-empted by IGD progressing with its disciplinary process. Rather SAJ could pursue an additional personal grievance claim if not satisfied with the disciplinary process or outcome.

[23] However, the involvement of the iwi leader and tikanga obligations do involve different considerations. I consider that there is a basis to see this as a very rare case where a **brief** halting of the employer's process is warranted to allow the hui to proceed. As IGD points out it has been a fairly lengthy period since it started its process but a short halt will likely cause little additional detriment to it.

⁶ *Ports of Auckland Ltd v Findlay* [2017] NZEmpC 45 at [23].

⁷ Above at n 2, at [108].

[24] I order that IGD is to take no further steps in its disciplinary process regarding SAJ until 9am on Monday 10 November 2025.

Costs

[25] Costs are reserved.

Nicola Craig
Member of the Employment Relations Authority